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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

20-CR-188 (JSR)

5 RUBEN WEIGAND and  
6 HAMID AKHAVAN,

7 Defendants.

Trial

8 -----x

9 New York, N.Y.

10 March 23, 2021  
9:45 a.m.

11 Before:

12 HON. JED S. RAKOFF,

13 District Judge

14 APPEARANCES

15 AUDREY STRAUSS

16 United States Attorney for the  
17 Southern District of New York

18 BY: NICHOLAS FOLLY

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23 -and-

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24 Attorney for Defendant Weigand

L3NHWEI1

(Trial resumed; jury not present)

THE COURT: So I reviewed the transcript on the point that was raised late yesterday, and I do think at one place Mr. Tayback did misstate the law. He says, this is at page 2581 of the transcript: "Again, however, that's a little besides the point." He was referring previously to his argument that the banks don't care, but then he continues.

"Again, however, that's a little beside the point because the question for bank fraud isn't what the banks do after the fact; remember, it's what they do to authorize a transaction, and the answer to that is nothing. It goes back to the earliest quote I gave you, which is Mr. Steinbach, if I'm Mr. Steinbach, and I've got the money, I can buy what I want."

So that's clearly not the law, and it's not the law for bank fraud, but it's even less the law for conspiracy to commit bank fraud, which is the only charge here. So I do think it needs to be briefly corrected in the way that I briefly corrected the government's misstatement on their opening summation.

MR. TAYBACK: Your Honor, may I be heard briefly?

THE COURT: Yes, of course.

MR. TAYBACK: Your Honor, I would just ask the Court to look at the language from the Court's instructions at page 17. I have a hard copy if it's easier to hand it to you.

L3NHWEI1

1 THE COURT: From my instructions, the instructions I'm  
2 about to give?

3 MR. TAYBACK: Yes. And just point to the language --

4 THE COURT: Just tell me the page and number.

5 MR. TAYBACK: Sure. It's page 17. It's jury  
6 instruction 12. It's page 17 so it's the second page of that  
7 instruction, and then I can just read the portion that I  
8 believe I was referencing there.

9 THE COURT: So page 17. Where on page 17?

10 MR. TAYBACK: If you go to the top, and then it would  
11 be, like, the clause that starts "But only" at the very first  
12 sentence, "But only that the federal" --

13 THE COURT: But the federally insured bank or credit  
14 union was induced to authorize the transactions by means of the  
15 misrepresentation, and indeed you were the one who suggested  
16 the word "authorize" there when we had the charging conference.

17 MR. TAYBACK: Actually, it was the codefendant's  
18 counsel.

19 THE COURT: OK. But in any event, I didn't know that  
20 you were suggesting or even hinting or imagining that it was  
21 the law that that meant that because they didn't check it right  
22 then and there, it didn't matter, even though, as government  
23 counsel pointed out on his summation, if you find out after the  
24 fact that there had been a thousand charges that you have  
25 authorized wrongly because you were deceived, you've been

L3NHWEI1

1 defrauded just as much as if you learned it at the very moment  
2 of authorization. Now, if you prefer, I'll give my curative  
3 instruction when I get to that part in the charge, but I would  
4 have thought you would prefer I just give it briefly at the  
5 outset today.

6 MR. TAYBACK: Actually, your Honor, what my -- I mean,  
7 obviously, I would object to further instruction, but beyond  
8 that, to the extent your Honor's going to give a curative  
9 instruction, the government did propose one, and I think it  
10 could be literally added to this jury instruction and I think  
11 that would address the issue.

12 THE COURT: Well, it is now clear from what I regard  
13 as a misstatement of law in your summation that I need to  
14 clarify for the jury exactly what the law is. So do you prefer  
15 me to do it in a brief instruction when they first come in, or  
16 do you prefer me to do it when we get to this point in the  
17 charge?

18 MR. TAYBACK: May I just confer with my codefendant's  
19 counsel for a second?

20 THE COURT: Sure.

21 (Counsel confer)

22 MR. TAYBACK: Your Honor, I would prefer it be done at  
23 the time of the jury instructions when the jury instructions  
24 are read.

25 THE COURT: At the time we get to that point in the

L3NHWEI1

1 jury instructions?

2 MR. TAYBACK: Yes.

3 THE COURT: OK. So now let's look at what the  
4 government has suggested. "It is not necessary that a  
5 misrepresentation made in connection with a particular  
6 transaction be reasonably" --

7 MS. LA MORTE: I was typing fast.

8 THE COURT: -- "reasonably likely to affect the  
9 decision to authorize that particular transaction. In this  
10 case the government has charged an ongoing scheme to defraud  
11 which involves engaging in a pattern or a course of deceptive  
12 conduct. It is sufficient for a federal bank fraud if there  
13 was a misrepresentation as to a material fact that a reasonable  
14 banker would have been reasonably likely to consider in making  
15 a decision authorizing any bank transaction involving the  
16 transfer of money or property that took place at any point  
17 during the course of this scheme."

18 That seems awfully wordy to me.

19 MS. LA MORTE: It is wordy. We were trying to sort of  
20 parrot the language in the instruction already, but it could be  
21 decluttered a little bit, I think.

22 THE COURT: So hold on a minute. I'm getting a  
23 critical note from my boss.

24 The jury is here. How about this: "It is not  
25 necessary that a misrepresentation made in connection with a

L3NHWEI1

Charge

1 particular transaction be reasonably likely to affect a  
2 decision to authorize that particular transaction at that time.  
3 The government has charged an ongoing scheme to defraud  
4 involving a course of misrepresentations over time."

5 How about that?

6 MS. LA MORTE: That's fine, your Honor.

7 THE COURT: All right. Let's bring in the jury.

8 MS. DEININGER: Your Honor, will that jury instruction  
9 be added to the instructions the jurors are going to receive?

10 THE COURT: No, we don't have time to do that, but  
11 I'll make sure they understand that.

12 (Jury present)

13 THE COURT: Please be seated.

14 So good morning, ladies and gentlemen. And once again  
15 you are a model of promptness, and it's very much appreciated.

16 You all have a copy now of my instructions of law?  
17 OK. Very good. I'm going to go over here and read them with  
18 you, but you can keep them with you as well throughout your  
19 deliberations, so that I get to take off my mask here.

20 And by the way, you know I've been criticizing the  
21 male members of this jury for not wearing more exciting  
22 clothing. You notice I'm just dressed in black, so I have no  
23 calling to complain, but in your honor I wore a very sharp tie  
24 today.

25 All right. Let's get serious. If you turn to the

L3NHWEI1

Charge

1 table of contents, you'll see that the instructions are divided  
2 into three parts. The first part is just general instructions  
3 about how you and every other jury goes about their business.  
4 The second group are instructions about the particular charge  
5 in this case, the single charge of conspiracy to commit bank  
6 fraud, and the third section is some concluding instructions  
7 about how you fill out your verdict form and things like that.  
8 So let's turn to page 3 where we begin with the first  
9 instruction.

10 We are now approaching the most important part of this  
11 case: your deliberations. You have heard all the evidence in  
12 the case, as well as the final arguments of the lawyers for the  
13 parties. Before you retire to deliberate, it is my duty to  
14 instruct you as to the law that will govern your deliberations.  
15 These are the final and binding instructions, which entirely  
16 replace the preliminary instructions I gave you earlier. As I  
17 told you at the start of this case and as you agreed, it is  
18 your duty to accept my instructions of law and apply them to  
19 the facts as you determine them.

20 Regardless of any opinion that you may have as to what  
21 the law may be or ought to be, it is your sworn duty to follow  
22 the law as I give it to you. Also, if any attorney or other  
23 person has stated a legal principle different from any that I  
24 state to you in my instructions, it is my instructions that you  
25 must follow.

L3NHWEI1

Charge

1           Because my instructions cover many points, I have  
2 provided each of you with a copy of them, not only so that you  
3 can follow them as I read them to you now but also so that you  
4 can have them with you for reference throughout your  
5 deliberations. In listening to them now and reviewing them  
6 later, you should not single out any particular instruction as  
7 alone stating the law, but you should instead consider my  
8 instructions as a whole.

9           Your duty is to decide the fact issues in the case and  
10 arrive, if you can, at a verdict. You, the members of the  
11 jury, are the sole and exclusive judges of the facts. You pass  
12 upon the weight of the evidence; you determine the credibility  
13 of the witnesses; you resolve such conflicts as there may be in  
14 the testimony; and you draw whatever reasonable inferences you  
15 decide to draw from the facts as determine them.

16           In determining the facts, you must rely upon your own  
17 recollection of the evidence. To aid your recollection, we  
18 will send you at the start of your deliberations a thumb drive  
19 containing all of the exhibits and an index of the exhibits.  
20 If you need to review particular items of testimony, we will  
21 also arrange to provide them to you in transcript, electronic,  
22 or readback form.

23           Please remember that none of what the lawyers have  
24 said in their opening statements, in their closing arguments,  
25 in their objections, or in their questions is evidence. Nor is



L3NHWEI1

Charge

1 anything I may have said evidence. The evidence before you  
2 consists of just three things: the testimony given by witnesses  
3 that was received in evidence, the exhibits that were received  
4 in evidence, and the stipulations of the parties that were  
5 received in evidence.

6 Testimony consists of the answers that were given by  
7 the witnesses to the questions that were permitted. Please  
8 remember that questions, although they may provide the context  
9 for answers, are not themselves answers -- not themselves  
10 evidence. Only answers are evidence, and you should therefore  
11 disregard any question to which I sustained an objection.  
12 Also, you may not consider any answer I directed you to  
13 disregard or that I directed be stricken from the record.  
14 Likewise, you may not consider anything you heard about the  
15 contents of any exhibit that was not received in evidence.

16 Furthermore, you should be careful not to speculate  
17 about matters not in evidence. For example, there is no legal  
18 requirement that the government prove its case through a  
19 particular witness or by use of a particular law enforcement  
20 technique. Nor should you speculate about why one or another  
21 person whose name may have figured in the evidence is not part  
22 of this trial or what his or her situation may be. Your focus  
23 should be entirely on assessing the evidence that was presented  
24 here for your consideration.

25 It is the duty of the attorney for each side of the

L3NHWEI1

Charge

1 case to object when the other side offers testimony or other  
2 evidence that the attorney believes is not properly admissible.  
3 Counsel also have the right and duty to ask the Court to make  
4 rulings of law and to request conferences at the sidebar, out  
5 of the hearing of the jury. All such questions of law must be  
6 decided by me. You should not show any prejudice against any  
7 attorney or party because the attorney objected to the  
8 admissibility of evidence, asked for a conference outside the  
9 hearing of the jury, or asked me for a ruling on the law.

10 I also ask you to draw no inference from my rulings or  
11 from the fact that on occasion I asked questions of certain  
12 witnesses. My rulings were no more than applications of the  
13 law, and my questions were only intended for clarification or  
14 to expedite matters. You are to expressly understand that I  
15 have no opinion as to the verdict you should render in this  
16 case.

17 You are to perform your duty of finding the facts  
18 without bias or prejudice as to any party. You are to perform  
19 your final duty in an attitude of complete fairness and  
20 impartiality. You are not to be swayed by rhetoric or  
21 emotional appeals.

22 The fact that the prosecution is brought in the name  
23 of the United States of America entitles the government to no  
24 greater consideration than that accorded any other party. By  
25 the same token, it is entitled to no less consideration. All

L3NHWEI1

Charge

1 parties, whether the government or individuals, stand as equals  
2 at the bar of justice.

3 Please also be aware that the question of possible  
4 punishment is the province of the judge, not the jury, and it  
5 should therefore not enter into or influence your deliberations  
6 in any way. Your duty is to weigh the evidence and not be  
7 affected by extraneous considerations.

8 It must be clear to you that if you were to let bias  
9 or prejudice or sympathy or any other irrelevant consideration  
10 interfere with your thinking, there would be a risk that you  
11 would not arrive at a true and just verdict. So do not be  
12 guided by anything except clear thinking and calm analysis of  
13 the evidence.

14 The defendants here, Hamid (or Ray) Akhavan, and Ruben  
15 Weigand are each charged with a federal crime about which I  
16 will instruct you shortly. Please bear in mind that the  
17 charge, or "count" as it is called, is not itself evidence of  
18 anything. Both of the defendants have pleaded not guilty, and  
19 you must consider the evidence against each of them  
20 individually. To prevail against a given defendant, the  
21 government must prove each essential element of the charge  
22 beyond a reasonable doubt as to that defendant. If the  
23 government succeeds in meeting this burden, your verdict should  
24 be guilty as to that defendant; if it fails, your verdict must  
25 be not guilty on that charge. This burden never shifts to any

L3NHWEI1

Charge

1 defendant for the simple reason that the law presumes a  
2 defendant to be innocent and never requires -- never imposes  
3 upon a defendant in a criminal case the burden or duty of  
4 calling any witness or producing any evidence.

5 In other words, each defendant starts with a clean  
6 slate and is presumed innocent until such time, if ever, that  
7 you as a jury are satisfied that the government has proved that  
8 he is guilty of the charge beyond a reasonable doubt.

9 Since, to convict a defendant of a given charge, the  
10 government is required to prove that charge beyond a reasonable  
11 doubt, the question then is, What is a reasonable doubt? The  
12 words almost define themselves. It is a doubt based upon  
13 reason. It is a doubt that a reasonable person has after  
14 carefully weighing all of the evidence. It is a doubt that  
15 would cause a reasonable person to hesitate to act in a matter  
16 of importance in his or her personal life. Proof beyond a  
17 reasonable doubt must therefore be proof of a convincing  
18 character that a reasonable person would not hesitate to rely  
19 on in making an important decision.

20 A reasonable doubt is not caprice or whim. It is not  
21 speculation or suspicion. It is not an excuse to avoid the  
22 performance of an unpleasant duty. The law does not require  
23 the government prove guilt beyond all possible doubt. Proof  
24 beyond a reasonable doubt is sufficient to convict.

25 If, after fair and impartial consideration of the

L3NHWEI1

Charge

1 evidence, you have a reasonable doubt as to a given defendant's  
2 guilt with respect to the charge against him, you must find  
3 that defendant not guilty. On the other hand, if, after fair  
4 and impartial consideration of all the evidence, you are  
5 satisfied beyond a reasonable doubt of a given defendant's  
6 guilt with respect to the charge against him, you should not  
7 hesitate to find that defendant guilty.

8 In deciding whether the government has met its burden  
9 of proof, you may consider both direct evidence and  
10 circumstantial evidence.

11 Direct evidence is evidence that proves a fact  
12 directly. For example, where a witness testifies as to what he  
13 or she saw, heard, or observed, that is called direct evidence.

14 Circumstantial evidence is evidence that tends to  
15 prove a fact by proof of other facts. To give a simple  
16 example, suppose that when you came into the courthouse today  
17 the sun was shining, it was a nice day, but the courtroom  
18 blinds were drawn and you could not look outside. Later, as  
19 you were sitting here, someone walked in with a dripping wet  
20 umbrella, and soon after somebody else walked in with a  
21 dripping wet raincoat. Now, on our assumed facts you cannot  
22 look outside of the courtroom and you cannot see whether it is  
23 raining, so you have no direct evidence of that fact. But on  
24 the combination of the facts about the umbrella and the  
25 raincoat, it would be reasonable for you to infer that it had

L3NHWEI1

Charge

1 begun raining.

2 That's all there is to circumstantial evidence. Using  
3 your reason and experience, you infer from established facts  
4 the existence or the nonexistence of some other fact. Please  
5 note, however, that it is not a matter of speculation or guess;  
6 it is a matter of logical inference.

7 The law makes no distinction between direct and  
8 circumstantial evidence. Circumstantial evidence is of no less  
9 value than direct evidence, and you may consider either or both  
10 and may give them such weight as you conclude is warranted.

11 It must be clear to you by now that counsel for the  
12 government and counsel for the defendants are asking you to  
13 draw very different conclusions about various factual issues in  
14 the case. Deciding these issues will involve making judgments  
15 about the testimony of the witnesses you have listened to and  
16 observed. In making these judgments, you should carefully  
17 scrutinize all the testimony of each witness, the circumstances  
18 under which each witness testified, and any other matter in  
19 evidence that may help you decide the truth and importance of  
20 each witness' testimony.

21 Your decision to believe or to not believe a witness  
22 may depend on how that witness impressed you. How did the  
23 witness appear? Was the witness candid, frank, and forthright,  
24 or did the witness seem to be evasive or suspect on some level?  
25 How did the way the witness testified on direct examination

L3NHWEI1

Charge

1 compare with how the witness testified on cross-examination?  
2 Was the witness consistent or contradictory? Did the witness  
3 appear to know what he or she was talking about? Did the  
4 witness strike you as someone who was trying to report his or  
5 her knowledge accurately? These are examples of the kinds of  
6 commonsense questions you should ask yourselves in deciding  
7 whether a witness is or is not truthful.

8 How much you choose to believe a witness may also be  
9 influenced by the witness' bias. Does the witness have a  
10 relationship with the government or a defendant that may affect  
11 how he or she testifies? Does the witness have some incentive,  
12 loyalty, or motive that might cause him or her to shade the  
13 truth? Does the witness have some bias, prejudice, or  
14 hostility that may cause the witness to give you something  
15 other than a completely accurate account of the facts he or she  
16 testified?

17 In this regard, you have heard testimony from  
18 witnesses who admitted to being involved in some of the alleged  
19 criminal activity with which the defendants are charged and  
20 testified either pursuant to a cooperation agreement with the  
21 government or pursuant to a grant of immunity. Specifically,  
22 Michael Tassone, Darcy Cozzetto, and John Wang each testified  
23 pursuant to a grant of immunity, and Oliver Hargreaves and  
24 James Patterson each testified pursuant to a cooperation  
25 agreement with the government. The law permits the use of

L3NHWEI1

Charge

1 testimony from some such witnesses. Indeed, such testimony, if  
2 found truthful by you, may be sufficient in itself to warrant  
3 conviction of a given defendant if it convinces you of that  
4 defendant's guilt beyond a reasonable doubt. However, the law  
5 requires that the testimony and motives of each such witness be  
6 scrutinized with particular care and caution. After carefully  
7 scrutinizing the testimony of a witness who is testifying  
8 pursuant to either an immunity order or a cooperation agreement  
9 and taking account of the special features of such agreements,  
10 you may give the testimony as little or as much weight as you  
11 deem appropriate.

12 As to all witnesses, you should also consider whether  
13 a witness had an opportunity to observe the facts he or she  
14 testified about and whether the witness' recollection of the  
15 facts stands up in light of the other evidence in the case.

16 In other words, what you must try to do in deciding  
17 credibility is to size up a person just as you would in any  
18 important matter where you were trying to decide if a person is  
19 truthful, straightforward, and accurate in his or her  
20 recollection.

21 The defendants did not testify in this case. Under  
22 our Constitution, a defendant has no obligation to testify or  
23 to present any evidence because it is the government's burden  
24 to prove a defendant guilty beyond a reasonable doubt. A  
25 defendant is never required to prove that he or she is



L3NHWEI1

Charge

1 innocent.

2 Accordingly, you must not attach any significance to  
3 the fact that the defendants did not testify. No adverse  
4 inference against either of the defendants may be drawn by you  
5 because that defendant did not take the witness stand, and you  
6 may not consider such silence against either of the defendants  
7 in any way in your deliberations in the jury room.

8 With these preliminary instructions in mind, let us  
9 turn to the specific charge against the defendants, Ray Akhavan  
10 and Ruben Weigand. This charge was originally set forth in  
11 what is called an indictment, which is simply a charging  
12 instrument. It is not itself evidence, so it will not be  
13 presented to you. The indictment in this case contains one  
14 charge or count. Specifically, the sole count of the  
15 indictment charges that at some time during the years 2016  
16 through 2019, the defendants conspired -- that is, agreed with  
17 each other and/or with one or more other persons -- to commit  
18 federal bank fraud.

19 I will instruct you in a moment concerning -- there's  
20 a typo there -- concerning the two elements of that charge. So  
21 if you have a pen, correct the word "three" there to the word  
22 "two." It will be clear from the rest of the instructions.

23 I will instruct you in a moment concerning the two  
24 elements of that charge. At the outset, however, let me  
25 instruct you that before either defendant can be convicted of

L3NHWEI1

Charge

1 the charge, the government must prove every essential element  
2 of the charge against that particular defendant beyond a  
3 reasonable doubt. In your deliberations and in reaching your  
4 verdict, you must consider each defendant separately and  
5 determine whether the government has carried its burden of  
6 proof with respect to each element of the charge as to the  
7 defendant you are considering.

8 In order for a given defendant to be guilty of the  
9 charge of conspiracy to commit federal bank fraud, the  
10 government must prove beyond a reasonable doubt each of the  
11 following two elements:

12 First, the existence of a conspiracy to commit federal  
13 bank fraud at any time during the charged time period of 2016  
14 through 2019; and

15 Second, that the defendant you are considering  
16 knowingly, willfully, and with specific intent to defraud  
17 joined and participated in this conspiracy.

18 I will now instruct you regarding each of these two  
19 elements.

20 Starting with the first element, what is a conspiracy?  
21 A conspiracy is an agreement or an understanding of two or more  
22 persons to accomplish by concerted action one or more unlawful  
23 purposes, known as the objects of the conspiracy. Here, the  
24 object of the alleged conspiracy was federal bank fraud.

25 To prove the charge in this case, the government need

L3NHWEI1

Charge

1 not prove that a defendant actually committed federal bank  
2 fraud. Rather, to establish the first element, the government  
3 must only prove beyond a reasonable doubt that two or more  
4 persons reached an agreement or understanding to commit federal  
5 bank fraud. But in order to determine whether there was such a  
6 conspiracy, you need to know the elements of federal bank  
7 fraud.

8 The elements of federal bank fraud, as applicable  
9 here, are three:

10 First, that a person devised a scheme to defraud a  
11 federally insured bank or credit union by means of  
12 misrepresentations.

13 Second, that one or more of the misrepresentations was  
14 material.

15 Third, that the perpetrator devised the scheme  
16 knowingly, willfully, and with a specific intent to defraud.

17 Let me now say a brief word about each of these  
18 elements of the bank fraud.

19 As to the first element, the scheme to defraud a bank  
20 or credit union means a scheme to use one or more  
21 misrepresentations to obtain money or property from a bank or  
22 credit union. Here, the alleged bank fraud was a scheme to  
23 deceive banks into effectuating credit and debit card purchases  
24 of marijuana by disguising those purchases as being for other  
25 kinds of goods. A federally insured bank is one that is

L3NHWEI1

Charge

1 insured by the Federal Deposit Insurance Corporation, and a  
2 federally insured credit union is one that is insured by the  
3 National Credit Union Share Insurance Fund. Banks and credit  
4 unions outside the United States are not federally insured, nor  
5 are credit card companies. So the scheme to be a bank fraud  
6 must impact a U.S.-based federally insured bank or credit  
7 union.

8           However, the perpetrator of federal bank fraud is not  
9 required to personally know that a bank or credit union was  
10 federally insured. Also, the government does not need to prove  
11 that the scheme succeeded, only that it was planned. Also, the  
12 government does not need to prove that a bank suffered any  
13 financial loss. Further, the government does not need to prove  
14 that the misrepresentations were made directly to a federally  
15 insured bank or credit union, but only that the federally  
16 insured bank or credit union was induced to authorize the  
17 transactions by means of the misrepresentations.

18           Let me pause there because I think there may have been  
19 some misunderstanding in some of the statements that were made  
20 in one of the defense counsel's summations on this point. So  
21 let me instruct you. It is not necessary that a  
22 misrepresentation made in connection with a particular  
23 transaction be reasonably likely to affect the decision to  
24 authorize that particular transaction at that particular time.  
25 Rather, what is charged here is an ongoing scheme to defraud,

L3NHWEI1

Charge

1 including a course of misrepresentations over a period of time  
2 through a pattern or a course of deceptive conduct. So you  
3 need to look at the whole picture.

4 Going back to the instructions on page 17.

5 As to the second element, a material fact, as  
6 applicable here, is a fact that a reasonable banker would be  
7 reasonably likely to consider in making a decision authorizing  
8 a bank transaction involving the transfer of money or property.  
9 For example, if a perpetrator made misrepresentations designed  
10 to make marijuana purchases look like the purchases of other  
11 goods, the misrepresentations would be material if, had the  
12 banker known that the purchasers -- that the purchases were  
13 disguised and really were for marijuana, such knowledge would  
14 be reasonably likely to influence a reasonable banker in  
15 deciding whether to authorize the purchases. Keep in mind that  
16 the test of materiality is what a reasonable banker would think  
17 and do. The government does not need to prove that any bank  
18 actually relied on a misrepresentation.

19 As to the third element, "knowingly" means to act  
20 consciously and voluntarily rather than by mistake or accident  
21 or mere inadvertence. "Willfully" means to act deliberately  
22 and with a bad purpose rather than innocently. A "specific  
23 intent to defraud" means an intent to use misrepresentations to  
24 obtain money or property from a federally insured bank,  
25 directly or indirectly.

L3NHWEI1

Charge

1 I've now instructed you regarding the elements of  
2 federal bank fraud, the alleged object of the conspiracy. But  
3 please remember that the government is not required to prove  
4 that any actual bank fraud was committed, but only that there  
5 existed a conspiracy, the object of which was an agreement to  
6 commit bank fraud. Thus, if you find that the government has  
7 proved beyond a reasonable doubt the existence of a conspiracy  
8 to commit bank fraud during the relevant period, then you must  
9 consider the second element of the charge of conspiracy,  
10 namely, that the defendant you are considering intentionally  
11 joined and participated in that conspiracy. To prove this  
12 element as to a given defendant, the government must prove  
13 beyond a reasonable doubt that he entered into the  
14 conspiracy -- that is, joined in the agreement to commit bank  
15 fraud -- and did so knowingly, intentionally, and with the  
16 specific intent to defraud, as I previously described those  
17 terms to you.

18 Please note that it is not necessary that the  
19 defendant you are considering be fully informed of all the  
20 details of the conspiracy in order to justify an inference of  
21 participation or his part. Nor does defendant need to know the  
22 full extent of the conspiracy or all of its participants.  
23 Indeed, it is not necessary that a defendant know more than one  
24 other member of the conspiracy. Nor is it necessary that the  
25 defendant actually receive any monetary or other benefit from

L3NHWEI1

Charge

1 participating in the conspiracy. Furthermore, the law does not  
2 require that a given defendant join the conspiracy through a  
3 written or verbal agreement. A tacit agreement or  
4 understanding is sufficient.

5 Nor does the law require that each conspirator have an  
6 equal role in the conspiracy. The defendant also need not have  
7 joined the conspiracy at the outset. The defendant may have  
8 joined it at any time in its progress, and he will still be  
9 held responsible for all that was done before he joined, as  
10 well as all that was done during the conspiracy's existence  
11 while the defendant was a member.

12 However, I want to caution you that the mere  
13 association by one person with another person or group of  
14 persons does not make that first person a member of the  
15 conspiracy even when coupled with knowledge that the second  
16 person or group of persons is taking part in a conspiracy. In  
17 other words, knowledge without participation is not sufficient.  
18 Likewise, even if a defendant himself caused a  
19 misrepresentation to be made but did so in good faith and  
20 without an intent to defraud, he would not be guilty of this  
21 conspiracy. What is necessary is that the defendant you are  
22 considering participated in the conspiracy with knowledge of  
23 its unlawful object, namely, bank fraud, and with intent to aid  
24 in the accomplishment of that object.

25 In short, in order to satisfy the second element of

L3NHWEI1

Charge

1 the charged offense as to a given defendant, you must find  
2 beyond a reasonable doubt the defendant you are considering,  
3 with an understanding of the unlawful character of the charged  
4 conspiracy, knowingly, intentionally, and with an intent to  
5 defraud joined and participated in the conspiracy for the  
6 purpose of committing bank fraud.

7 One last requirement. Before either defendant can be  
8 convicted, the government must also establish what is called  
9 "venue," that is, that some act in furtherance of the  
10 conspiracy occurred in the Southern District of New York. The  
11 Southern District of New York is the judicial district that  
12 includes the Bronx and Manhattan, as well as Westchester,  
13 Rockland, Putnam, Dutchess, Orange, and Sullivan Counties.  
14 Venue is proven if any act in furtherance of the conspiracy  
15 occurred in the Southern District of New York, regardless of  
16 whether it was the act of either charged defendant or anyone  
17 else. Finally, on the issue of venue, and on this issue alone,  
18 the government can meet its burden by a preponderance of the  
19 evidence, that is, by showing that it was more likely than not  
20 that an act in furtherance of the conspiracy occurred in the  
21 Southern District of New York.

22 You will shortly retire to the jury room to begin your  
23 deliberations. As soon as you get to the jury room, please  
24 select one of your number as the foreperson to preside over  
25 your deliberations and to serve as your spokesperson if you



L3NHWEI1

Charge

1 need to communicate with the Court.

2 You will be bringing with you into the jury room a  
3 copy of my instructions of law and a verdict form on which to  
4 record your verdict. Let me show you the verdict form. It's a  
5 very simple one-page document. It just asks as to each  
6 defendant, do you find the defendant guilty or not guilty?

7 After you have filled out your verdict form, your  
8 foreperson will sign it and date it and fold it up and put it  
9 in this envelope very cleverly marked "verdict." And that will  
10 be sealed, and I will not open it until you're all back here in  
11 the courtroom. Then I will ask each one of you, after I read  
12 the verdict, whether, in fact, that is your verdict. And we go  
13 through those technicalities to be absolutely sure we have your  
14 verdict as you have decided.

15 OK. Back to the instructions.

16 In addition, we will send into the jury room a thumb  
17 drive with all the exhibits that were admitted into evidence  
18 and an index to help you find what you need. If you have any  
19 trouble with the thumb drive, the world's resident expert is my  
20 law clerk, Mr. Mandilk, who can send -- you can just send us a  
21 note, and he'll come in and show you how to work it.

22 If you want any of the testimony provided, that can  
23 also be done in either transcript, electronic, or readback  
24 form. But please remember that it is not always easy to locate  
25 what you might want, so be as specific as you can be in

L3NHWEI1

Charge

1 requesting portions of the testimony. Any of your requests, in  
2 fact, any communication with the Court, should be made to me in  
3 writing, signed by your foreperson, and given to the marshal  
4 who will be available outside the jury room throughout your  
5 deliberations. After consulting with counsel, I will respond  
6 to any question or request you have as promptly as possible,  
7 either in writing or by having you return to the courtroom so  
8 that I can speak with you in person.

9           You should not, however, tell me or anyone else how  
10 the jury stands on any issue until you have reached your  
11 verdict and recorded it on your verdict form. As I have  
12 already explained, the government, to prevail against a  
13 particular defendant, must prove each essential element of the  
14 conspiracy charge beyond a reasonable doubt. If the government  
15 carries its burden with respect to a defendant, you should find  
16 that defendant guilty of that charge. Otherwise, you must find  
17 that defendant not guilty of that charge.

18           Each of you must decide the case for yourself after  
19 consideration with your fellow jurors of the evidence in the  
20 case, and your verdict must be unanimous. In deliberating,  
21 bear in mind that while each juror is entitled to his or her  
22 opinion. You should exchange views with your fellow jurors.  
23 That is the very purpose of jury deliberation -- to discuss and  
24 consider the evidence, to listen to the arguments of fellow  
25 jurors, to present your individual views, to consult with one

L3NHWEI1

Charge

1 another, and to reach a verdict based solely and wholly on the  
2 evidence. If, after carefully considering all the evidence and  
3 arguments of your fellow jurors, you entertain a conscientious  
4 view that differs from the others, you are not to yield your  
5 views simply because you are outnumbered. On the other hand,  
6 you should not hesitate to change an opinion that, after  
7 discussion with fellow jurors, now appears to you erroneous.

8 In short, your verdict must reflect your individual  
9 views and must also be unanimous.

10 This completes my instructions of law.

11 Now, all objections previously made by counsel for any  
12 of the parties to my charge are hereby deemed to be renewed at  
13 this point and are denied for the reasons stated at the  
14 charging conference.

15 Is there any reason any counsel needs to approach the  
16 bench otherwise?

17 MR. FOLLY: No, your Honor.

18 MR. TAYBACK: No, your Honor.

19 MR. GILBERT: No, your Honor.

20 THE COURT: Very good. We will then swear in the  
21 marshal who will guard you throughout your deliberations.

22 THE DEPUTY CLERK: Marshal, please come forward.

23 (Marshal sworn)

24 THE DEPUTY CLERK: Jurors, please follow the marshal.

25 (At 10:30 a.m., the jury retired to deliberate)

L3NHWEI1

(Jury not present)

THE COURT: Please be seated.

All right. So when I was a trial lawyer, what I most wanted to do at this point in time was get about 15 hours of sleep, but at least one of you from each party has to remain in the courtroom except between 12:45 and 1:45.

MS. LA MORTE: Your Honor, one simple question.

THE COURT: Yes.

MS. LA MORTE: What's the situation with the call-in line for the public? Like, when there's a jury note or the verdict's read, is it just open?

THE COURT: Everything we do here in court is open.

MS. LA MORTE: OK. So it will just be silence until --

THE COURT: Pardon?

MS. LA MORTE: So it will just be silence on the line until something happens, is that generally how it works? I guess we'll find out.

THE LAW CLERK: Yes and no. We may have other proceedings on that line, so there may or may not be silence. Anyone on that line has to make sure they're not muted so as not to disrupt any other proceedings on that line. So otherwise there will be silence.

MS. LA MORTE: Thank you.

THE COURT: I actually have proceedings at 11:00,

L3NHWEI1

1 11:15, and some other time.

2 MS. LA MORTE: OK.

3 THE COURT: But you're welcome to listen in.

4 MS. LA MORTE: I will. We'll be here.

5 THE COURT: Very good. We'll see you all.

6 MR. TAYBACK: Your Honor, one other brief matter.

7 THE COURT: Yes.

8 MR. TAYBACK: May we have leave to submit an  
9 application to renew our device order for this week? It  
10 expires today.

11 THE COURT: Sure.

12 MR. TAYBACK: So that we can bring our devices in.

13 THE COURT: Yes, absolutely.

14 MR. TAYBACK: We'll submit that today, your Honor.

15 THE COURT: Good. Thanks a lot.

16 MS. LA MORTE: Thank you, your Honor.

17 (Recess pending verdict)

18 (Continued on next page)

L3NPWEI2

Trial

1 (In open court; jury not present)

2 THE COURT: Please be seated. Nothing of great  
3 moment, but first, there was a note received at 11:33: "Can we  
4 have" -- is that "smart board"?

5 MS. LA MORTE: Yes.

6 MR. GILBERT: Yes.

7 THE COURT: -- "smart board and markers," signed  
8 H. Todd Freeman, foreperson.

9 So I had my courtroom deputy supply them with what I  
10 used to call a white board, but apparently it's now a smart  
11 board. I wonder what a stupid board is? But in any event,  
12 that was taken care of. I didn't see any need to consult with  
13 counsel on that.

14 Then we just received a note at 12:19: "Can we have  
15 the closing remarks from both prosecutor and defendants." Now,  
16 I know you would love to send that in, appropriately stamped  
17 with your copyrights, but the law does not permit summations to  
18 be sent to the jury. So I have drafted the following note for  
19 your approval: "To the jury: Thank you for your note  
20 requesting the final arguments of counsel; however, the law  
21 does not permit me to send those to you, since they are not  
22 evidence. I regret this, but please let me know if there are  
23 any other way counsel and I can be of help." Signed, "Judge  
24 Rakoff."

25 Any disagreement with that?

L3NPWEI2

1 MR. FOLLY: No, your Honor.

2 MR. GILBERT: No, your Honor.

3 MR. TAYBACK: No, your Honor. That's fine.

4 THE COURT: I'll give that to my courtroom deputy, and  
5 I have another copy here, which I will mark as Court Exhibit 2  
6 because I will mark the copy of my charge as Court Exhibit 1  
7 and ask that it be docketed.

8 Okay. I also asked my courtroom deputy to have the  
9 marshal inform the jury that you all will be at lunch from  
10 12:45 to 1:45; so we won't be able to respond to anything  
11 during that period.

12 Anything else?

13 MR. FOLLY: No.

14 MR. TAYBACK: Nothing, your Honor.

15 MR. GILBERT: No, your Honor.

16 THE COURT: Very good. See you later.

17 (Recess pending verdict)

18 (In open court; jury not present)

19 THE COURT: All right. We received several notes.  
20 All right. One of them, which my courtroom deputy is bringing  
21 up but was to the effect that the juror who wanted to leave at  
22 3:30 today, which we had agreed to the other day, now wanted to  
23 leave at 3:00, and it was signed not just by her but by the  
24 foreperson. So it appears it has the agreement of the jury as  
25 a whole.

L3NPWEI2

1           So I think we need to let them go at 3:00, making  
2 clear that they all have to go and deliberations have to cease.  
3 And I'll have my courtroom deputy instruct them that the  
4 foreperson has to make sure they don't recommence deliberations  
5 tomorrow morning until all 12 of them are there, and they  
6 should plan on a 9:45 to 3:45 day tomorrow.

7           Any problem with any of that?

8           MR. FOLLY: No, your Honor.

9           MR. GILBERT: No, your Honor.

10          MR. TAYBACK: No, your Honor.

11          THE COURT: Very good. Then the next note, this one I  
12 have here is: "Can we have the transcript of Ollie's  
13 (Hargreaves) testimony." I know you guys have been working on  
14 it, but I've been told that it's taking a long time because you  
15 feel that you need to not only eliminate sidebars, which of  
16 course I agree with, and any proceedings that occurred outside  
17 the presence of the witness, like in between breaks or things  
18 like that, but also you have to strike any testimony that was  
19 directed to be stricken. I don't agree with that at all.

20          They've been instructed to disregard it. That was  
21 clear in my instructions and that's going to take much more  
22 time. If we just get rid of sidebars and in-between breaks, it  
23 shouldn't take you more than ten minutes to put this darn thing  
24 together. But if you have to go through like each line by line  
25 to see if anything was stricken, it's going to take you



L3NPWEI2

1 forever.

2 So unless anyone disagrees, my practice, which I've  
3 used for many years, is just to send in -- and here we can do  
4 it electronically -- the testimony without the sidebars and  
5 without any colloquy that occurred outside the presence of the  
6 witness. Any objection to that?

7 MR. TAYBACK: Your Honor, no objection. I'm fine with  
8 that.

9 MR. GILBERT: No objection.

10 MS. LA MORTE: That's fine, your Honor.

11 THE COURT: Very good. All right. So let's see if we  
12 can get that done before they leave at 3:00; so at least  
13 they'll know that we've responded to their -- yes, ma'am?

14 MS. LA MORTE: No, I'm just --

15 THE COURT: You're just --

16 MS. LA MORTE: I'm hanging out.

17 THE COURT: Now, we've got two other notes just  
18 received: "Can you tell us which documents where Ruben signs  
19 off on the EUprocessing e-mail account?" So actually, I misread  
20 it -- "which document." I think that's the document each side  
21 referred to in the summation.

22 MS. LA MORTE: Yes.

23 THE COURT: So what is the number?

24 MS. LA MORTE: 3923.

25 THE COURT: So we will tell them that it's 3923.

L3NPWEI2

1 MS. DEININGER: Government Exhibit 3923, to be clear.

2 MS. LA MORTE: Yes.

3 THE COURT: Defense exhibits usually start about  
4 25,000, right?

5 MS. LA MORTE: In this case, yes.

6 THE COURT: And then the next final note is: "Do you  
7 know the document where Ruben states" -- you haven't seen this  
8 yet.

9 MR. FOLLY: I think it's "Ruben states that" --

10 THE COURT: I'm sorry?

11 MR. FOLLY: I think it's that "Ruben states that four  
12 out of" --

13 THE COURT: Oh, four. "Four out of."

14 MR. FOLLY: I think that's what it is.

15 MS. LA MORTE: Something fraudulent -- four of the  
16 applications have been submitted.

17 THE COURT: Four out of what?

18 MR. FOLLY: It's hard to read that.

19 MS. LA MORTE: It's hard to read some words. I think  
20 it's "the."

21 THE COURT: "Out of the five," maybe.

22 MS. LA MORTE: I don't know. We have what we think is  
23 responsive. It's Government Exhibit 4,004, at page 84.

24 MR. GILBERT: I'm sorry, your Honor. We're just going  
25 to go and look at the document on the screen.

L3NPWEI2

1 THE COURT: Yes, go ahead.

2 (Pause)

3 I'm sorry if someone wanted to say something, I can't  
4 hear you from back there.

5 MR. ARTAN: We're still looking.

6 THE COURT: Ms. LaMorte, what was the number of that  
7 first exhibit?

8 MS. LA MORTE: 3923.

9 THE COURT: 3923. Okay.

10 MR. TAYBACK: I guess just in the interest of clarity,  
11 speaking to Mr. Folly, there were portions that I think had  
12 been redacted that were inconsistent with what your Honor said,  
13 and we're going to redact those only where the jury is not  
14 present, right?

15 THE COURT: You're talking about the testimony?

16 MR. TAYBACK: Yes.

17 THE COURT: The only things to be redacted are the  
18 sidebars, if any -- I'm not sure there were more than one or  
19 two -- and then anything that occurred outside the presence of  
20 the jury, like a colloquy at a break.

21 MR. TAYBACK: Yes.

22 THE COURT: Everything else goes.

23 MR. TAYBACK: I understand.

24 (Pause)

25 So now I'm getting used to our foreperson's

L3NPWEI2

1 handwriting. I now would read the most recent note as "Do you  
2 know the document where Ruben states that four out of the five  
3 applicants" or "applications have been submitted?"

4 MS. LA MORTE: Your Honor, the thing that I'm thinking  
5 of -- I don't remember any such testimony or document. I  
6 have -- what I have up on the screen is 4,004, 84. Ray says:  
7 "Ruben, when was the Hot Robot's app submitted to Wirecard? I  
8 thought only the three other ones got submitted." And then  
9 Ruben responds: "All four at the same time." Then Ray says:  
10 "Ruben, can you please confirm if we submitted all four of our  
11 current corps to Kalixa, as well as Wirecard, or did we submit  
12 all four to Wirecard" --

13 THE COURT: Okay. I think that must be it. If it's  
14 not it, they'll tell us. Since it's in evidence, it's harmless  
15 if it turns out to be not what they want. What's the number on  
16 that?

17 MS. LA MORTE: 4,004, page 84.

18 THE COURT: 4,004, at page 84. Okay. Any  
19 disagreement with that?

20 MR. GILBERT: No.

21 MR. TAYBACK: No, your Honor.

22 THE COURT: Okay. So I'll have my courtroom deputy  
23 tell them the following things:

24 One. That they can leave at 3:00; that they all have  
25 to leave, and they can't resume deliberations until all 12 of

L3NPWEI2

1       them are back, and the foreperson is in charge of making sure  
2       that's true. And they should return at 9:45 tomorrow.

3               Two. That we are working on getting them  
4       Mr. Hargreaves' testimony. We hope to get it to them before  
5       they leave at 3:00, but if not, it will be waiting for them  
6       when they return at 9:45 tomorrow.

7               Three. That the exhibit they asked for regarding  
8       where Ruben signs off on the EUprocessing e-mail account is the  
9       number -- I just gave the number to my courtroom deputy.

10              THE DEPUTY CLERK: 3923.

11              THE COURT: And finally, that the document responsive  
12       to their other note is the number that we -- I also just wrote  
13       down and a particular page. And so we'll give all that to  
14       them, and we'll need to excuse my courtroom deputy right now so  
15       they get that to them before they leave at 3:00.

16              Okay. And you all can leave at 3:00.

17              Anything anyone needs to raise with the Court?

18              MR. FOLLY: No, your Honor.

19              MR. GILBERT: No, your Honor.

20              MR. TAYBACK: No, your Honor.

21              MS. LA MORTE: No.

22              THE COURT: Very good. All right.

23              MS. LA MORTE: See you tomorrow.

24              THE COURT: No, hang out until 3:00.

25              MS. LA MORTE: All right. We have five minutes.

L3NPWEI2

1 THE COURT: All right. See you tomorrow. Oh, this is  
2 the one and only thing I will say off the record.

3 (Adjourned until 9:45 a.m. on March 24, 2021)  
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